IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5734 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORBHAI DAYALBHAI KHALASI HUSBAND OF DETENUE CHANDRABEN
Versus
COMMISSIONER OF POLICE

Appearance:
MR NM KAPADIA for Petitioner
MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. Heard Mr.N.M.Kapadia, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The petition is filed under Article 226 of the

Constitution of India by one Kishorbhai Dayalbhai Khalasi to challenge the detention order dated 9-7-1999 passed by the respondent No : 1 - The Commissioner of Police, Surat City against the detenu - the wife of the present petitioner - Chandraben. The detention order is passed in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short').

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced on running page No : 28 to 32 interalia indicate that the detenu is alleged to have been involved in three prohibition cases registered vide C.R. No : 222/98, C.R. No : 320/99 and 581/99 registered in between 3-5-98 to 31-3-99. That in each case, the country made liquor was seized from the possession of the detenu. That in each case, the detenu was arrested on 3-5-98, 29-6-98 and 31-5-98 respectively and was released on bail on the same day.

Over and above, that two witnesses on assurance of their anonymity have given their statement dated 29-6-99 regarding the anti social activities of the detenu and have narrated incidents alleged to have occurred on 16-5-99 and 20-6-99 respectively. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Surat City as the detaining authority has come to the conclusion that the detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the detenu from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the detenu that the impugned order suffers from the non application of mind inasmuch as when the impugned order is passed, the detenu was already released on bail in cases registered against her. That before passing the impugned order, the detaining authority has failed to consider the aspect of claiming cancellation of bail granted to the detenu as available under Section 437(5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under

Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of grounds of detention, it appears that the detaining authority has stated that the detenu having been released on bail is likely to continue the bootlegging activities and thereby, the detention order is necessary but there is nothing stated therein that from which it could be inferred that the detaining authority has considered the aspect of claiming cancellation of bail before passing the order. In view of the said fact, it is difficult to uphold the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 9-7-1999 passed by respondent No. 1 - The Commissioner of Police, Surat City against the detenu is hereby quashed and set aside. The detenu - CHANDRABEN W/O KISHORBHAI DAYALBHAI KHALASI is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 29-2-2000 (A.K.Trivedi, J.)

#kailash#